IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4691 of 1999,

SPECIAL CIVIL APPLICATION No 4764 of 1999,

SPECIAL CIVIL APPLICATION No 4877 of 1999

and

SPECIAL CIVIL APPLICATION No 4996 of 1999

with

CIVIL APPLICATION NOS. 12758 of 2001 & 687 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL RAMESHBHAI LAKHUBHAI & OTHERS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4691 of 1999

MS SONAL R. SHAH for MR YN OZA for Petitioner No. 1-14

2. Special Civil Application No. 4764 of 1999
MR YV SHAH for Petitioners
3. Special Civil Application No. 4877 of 1999
MR P.H. PATHAK for the petitioners.
4. Special Civil Application No. 4996 of 1999
5. Civil Application Nos. 12758/01 & 687/02
MR NIRZAR S. DESAI for the applicants.

MR. N.D. GOHIL, LD. ASSISTANT GOVERNMENT PLEADER
for the Respondent State in all matters.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/10/2004

ORAL JUDGEMENT

In this group of Special Civil Applications, since common questions of law and facts arise, the same are being disposed of by this common judgement.

2. The petitioners in this group of petitions have been working since number of years with the respondents as workmen on daily wage basis. It is the case of the petitioners that they have been engaged since number of years for the irrigation work carried out by the respondents. The petitioners have contended in this group of petitions that looking to the length of service, in fact their services were required to be regularised, however, their services were sought to be terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, by issuance of notices in the months of May and June, 1999.

2.1 In Special Civil Application No. 4691 of 1999, the petitioners have challenged the impugned notice of termination dated 5.6.1999, whereas in Special Civil Application No. 4764 of 1999, the petitioners have challenged the impugned notice of termination dated 8.6.1999. In Special Civil Application No. 4877 of 1999, the petitioners have approached this Court when they were served with a termination notice dated 8.6.1999; whereas in Special Civil Application No. 4996 of 1999, the petitioners have approached challenging the notice of termination dated 5.6.1999.

2.2 At the time of hearing, learned Counsel for the petitioners in Special Civil Application No. 4996 of 1999 has stated at the bar that petitioners Nos. 5 & 6 mentioned at Annexure "A" to the petition have expired and therefore, they stand deleted from the proceedings. Likewise, petitioner No.9 in Special Civil Application

No. 4691 of 1999 is also stated to be expired and therefore, his name also stands deleted from the proceedings. However, in both these cases, it will be open for the heirs of the said deceased workmen to take such legal recourse as may be available to them.

2.3 By interim orders, though this Court had protected the workmen concerned from the effect of termination of their service, it is not in dispute that on account of the stay orders of the Court reaching the Government after the termination had already taken effect to, and in some cases on account of non-extension of the stay by the Court, all the concerned petitioners-workmen were terminated from service in the year 1999 itself. Thus, the petitioners are out of job almost since filing of these petitions.

3. Though number of contentions have been raised in support of the challenge by the petitioners in respective petitions, the focus of the entire debate before this Court was narrowed down to the action of the respondents being illegal on the ground of violation of principles of `last come first go' and in that sense, of violation of provisions of Section 25G of the Industrial Disputes Act. The petitioners, though have raised contentions with respect to not being given benefits of the Government Circular dated 17.10.1988, the said issue is not being agitated in this group of petitions and the petitioners are granted liberty as prayed for, to agitate the said issue before the proper forum as may be advised to them.

4. It is true that the petitioners are challenging the action of the respondents in terminating their services on the ground of violation of Section 25G of the Industrial Disputes Act, and that therefore, normally the proper forum to agitate such disputes would be the concerned Labour Court/Industrial Tribunal under the Industrial Disputes Act. In the present case however, as is being outlined hereinafter, I find that so far as necessary facts required to decide such question is concerned, there is no dispute between the parties and considering the undisputed factual position, it is possible to decide the said question without relegating the petitioners to the remedy under the Industrial Disputes Act.

5. The respondents have produced on record the seniority list of the workmen engaged at Panam Irrigation Division, where all the petitioners were also working. From this seniority list prepared and produced by the respondents, it is possible to locate the names of all

petitioners. The position of each petitioner in the seniority list as given in the tabular form by the respective Counsel, which is not disputed by the respondents, is taken on record.

6. Learned Assistant Government Pleader, upon instructions from the officer of the respondents, namely - Shri. P.B. Chaudhary, Executive Engineer, who is present in the Court, has stated that out of 544 workmen whose names appear in the said seniority list of daily rated workmen of Panam Irrigation Division, currently 312 are still in service. From the records, the learned AGP with the help of the Officers present, has also ear-marked from the seniority list those of the workmen who are still in service.

7. From the available material as noted above, this Court compared the position of the petitioners before this Court in the seniority list, with the position of workmen who are still in service, and found that large number of persons junior to the petitioners are still retained in service, whereas services of all the petitioners were sought to be terminated by issuing different notices in the months of May and June, 1999. From the said material it is not difficult to come to the conclusion that while terminating the services of the workmen, large number of junior persons to the petitioners are retained in service. The action of the respondents is thus, clearly opposed to the well accepted and well established principle of last come first go, and therefore is in violation of Articles 14 and 16 of the Constitution of India. The said action of the respondents is also in contravention of the provisions of Section 25G of the Industrial Disputes Act. This conclusion I have come to on the basis of indisputable facts and therefore, I do not find any necessity to relegate the petitioners to the remedy under the Industrial Disputes Act.

8. In conclusion, I find that the action of the respondents in terminating the services of the petitioners in this group of petitions cannot be sustained and the same is therefore quashed and set aside. Though ordinarily the consequence of setting aside of such termination orders would result into atleast some portion of backwages in favour of the workmen, at the concession of the learned Advocates appearing for the respective petitioners, it is provided that though by virtue of setting aside of the impugned terminations the petitioners would be entitled to

reinstatement in service with continuity, but without backwages. Since the order of withholding of backwages is upon concession of the Counsel for the petitioners, in the event of the respondents challenging the present judgement and order before the higher forum, it would be open for the petitioners to agitate all issues available to them including pressing for payment of backwages, if otherwise available, and I have not expressed any opinion on the legality of such a demand.

9. In the result, the petitions are partly allowed. Rule is made absolute to the above extent in each petition with no order as to costs. Since the reinstatement of the workmen is being directed without any backwages, it is expected that the same shall be carried out within a period of six weeks from the date of receipt of a copy of this order.

10. In view of the above, Civil Application Nos. 12758 of 2001 and 687 of 2002 do not survive and the same are disposed of accordingly.

(Akil Kureshi, J.)

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